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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,615	03/29/2001	Ervin Dennis Walter	1517.002	4103
23598 7590 09/04/2008 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER				
KOHUT, DAVID M				
ART UNIT		PAPER NUMBER		
3626				
NOTIFICATION DATE		DELIVERY MODE		
09/04/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

# Office Action Summary

**Application No.**

09/821,615

**Applicant(s)**

WALTER ET AL.

**Examiner**

DAVID M. KOHUT

**Art Unit**

3626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. In the amendment filed 20 May 2008, the following has occurred: Claims 71 and 77 have been amended.

***Claim Objections***

2. Claims 71 and 77 are objected to because of the following informalities: Claim 71, lines, 11 and 15, and Claim 77, lines 11 and 14, should state "with access **to** the patient-sourced data" not "with access the patient-sourced data". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 71-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 71 recites a Web portal that operates in "an anonymous mode" and "a registered mode." It is unclear how the Web portal can operate in both of these modes since they require different levels of patient identification.
6. Claim 77 recites substantially similar limitations to claim 71 and, as such is rejected for similar reasons.
7. Claims 72-76 and 77-81 are rejected based upon their dependency on claims 71 and 77.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 71-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker, U.S. Patent No. 6,988,075 in view of Ilsen et al., U.S. Patent No. 6,757,898.

10. As per claim 71, Hacker teaches a computer system allowing data to be added to a clinical medical record system comprising: a computer-implemented clinical medical record database holding clinical information created by and accessible to healthcare providers (see column 7, lines 22-25); a personal health web page stored on a computer-readable medium configured to allow selection of an anonymous mode or a registered mode wherein the registered mode requires machine authentication of the identity of a user and the anonymous mode does not require authentication of the identity of the user (see column 8, lines 46-59); a computer-implemented Web portal accepting medical data and operating in a registered mode in which the patient is provided with access the data of the clinical medical record when the patient has registered and is thus fully identified (see column 8, lines 46-57).

11. Hacker does not explicitly teach accepting patient-sourced medical data and the Web portal operating in an anonymous mode in which the patient can access the patient-sourced medical data when the patient is no fully identified. Ilsen teaches a system that accepts patient-sourced medical data through a computer-implemented

Web portal that operates in an anonymous mode in which the patient is provided with access the patient-sourced medical data when the patient is not fully identified (see column 13, lines 20-48). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine this functionality with the system of Hacker. One of ordinary skill in the art would have been motivated to combine this functionality for the purpose of providing the patient with greater access to relevant information including patient-sourced information (see column 4, lines 24-26 of Ilsen).

12. As per claim 72, Hacker in view of Ilsen teaches the system of claim 71 as described above. Hacker further teaches the registered mode allows integrated access of data of the clinical medical record by the patient without re-entry of information by the patient (see column 8, lines 46-59).

13. As per claim 73, Hacker in view of Ilsen teaches the system of claim 71 as described above. Hacker further teaches the Web portal in the registered mode allows healthcare professionals to view selected data flagged by the patient (see column 8, lines 4-7).

14. As per claim 74, Hacker in view of Ilsen teaches the system of claim 71 as described above. Hacker further teaches the Web portal allows the patient to undertake electronic communication with healthcare professionals (see column 10, lines 4-33).

15. As per claim 75, Hacker in view of Ilsen teaches the system of claim 71 as described above. Hacker does not explicitly teach the patient provides a user name and identifying information that is anonymous in nature in the anonymous mode. Ilsen further teaches the patient provides a user name and identifying information that is

anonymous in nature in the anonymous mode (see column 13, lines 49-54). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such functionality into the system of Hacker for the reasons given above with respect to claim 71.

16. As per claim 76, Hacker in view of Ilsen teaches the system of claim 71 as described above. Although Hacker teaches a registered mode, Hacker does not explicitly teach the Web portal allowing patients to make appointments with healthcare professionals. Ilsen further teaches the Web portal allows patients to make appointments with healthcare professionals (see column 13, lines 20-22). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such functionality into the system of Hacker for the reasons given above with respect to claim 71.

17. Claims 77-82 recite substantially similar method limitations to system claims 71-76 and, as such, are rejected for similar reasons as given above.

### ***Response to Arguments***

18. In the remarks filed 20 May 2008, Applicant argues in substance that (1) neither Hacker nor Ilsen teaches or suggests an electronic medical record created by a healthcare provider and having a patient-sourced portion and a medical record portion where access to the patient medical record portion requires that the user be registered.

19. In response to Applicant's argument (1), Examiner respectfully contends that Ilsen does in fact teach a system that accepts patient-sourced medical data when the patient is not fully identified (wherein the patient-sourced medical data includes the

request for an appointment and wherein the patient is not fully identified since the patient does not need to be authenticated to request an appointment by filling out an on-line form)(see column 13, lines 20-48). In addition, Examiner respectfully contends that Hacker does teach a medical record portion where access to the patient medical record portion requires that the user be registered (wherein authentication occurs through the use of any suitable means for providing unique access identification means for each patient and the medical records are stored electronically) (see column 7, line 43 through column 8, lines 1-17). Therefore, Applicant's arguments are not found to be persuasive.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Kohut, Esq. whose telephone number is 571-270-1369. The examiner can normally be reached on M-Th 730-5 w/1st Fri off. 2nd Fri 730-4.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. M. K./  
Examiner, Art Unit 3626  
8/28/2008

/C Luke Gilligan/  
Supervisory Patent Examiner, Art Unit 3626



